IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Crl.Rev.Pet.No. 2802 of 2007()

CRA.74/2005 of ADDL.SESSIONS COURT(ADHOC-I), MANJERI
CC.53/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II(FOREST OFFENCES), MANJERI

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

MANOJ, S/O UNNI,
KOTTAMUKATH HOUSE, PULINHAM, VELLAMUNDA,
WAYANAD.

BY ADV. SRI.P.SAMSUDIN

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KONDOTTY,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2802 OF 2007

Dated this the 1st day of August, 2007

O R D E R

The revision petitioner was the accused in C.C.No.53/2004 on the file of the JFCM-II (Forest Offences), Manjeri for offences punishable under sections 457 and 380 IPC.

2. The case of the prosecution can be summarised as follows:-

Sometime between 9 p.m. on 3.1.2003 and 3.30 a.m. on 4.1.2003 the accused committed house breaking by night into the shop No.C.12.32(1) styled as Naseeb Radiator Works belonging to PW2 and situated at Kondotty bye-pass road by removing the asbestos sheet on the south eastern portion of the roof and committed theft of two radiators kept inside the shop for the purpose of repairing. The accused has thereby committed offences punishable under sections 457 and 380 IPC.

3. On the side of the prosecution, six witnesses were examined as PWs 1 to 6 and four documents as Exhibits P1 to P4 and MO1 series of radiators and MO2 gunny bag were marked.

4. After the close of the prosecution evidence, the accused was questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances. He did not adduce any defence evidence.

5. The learned Magistrate after trial, as per judgment dated 3.1.2005 found the revision petitioner guilty of the offences and sentenced him to undergo rigorous imprisonment for three years under each of the said offences with a direction that the sentence shall run concurrently. An appeal preferred by the revision petitioner as Criminal Appeal No.74/2005 before the Additional Sessions Judge(Adhoc-I), Manjeri was dismissed as per judgment dated 20.2.2007. It is the said conviction which is assailed in this revision.

6. I heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

7. Assailing the conviction recorded, the learned counsel for the revision petitioner made the following submissions before me:-

There is nothing to show that Naseeb Radiator Works is

belonging to PW2, who admitted that he is not in possession of documents showing his ownership. Similarly, there is nothing in MO1 series of radiators to indicate the name of the customer who had allegedly entrusted them with PW2 for repairs. The conviction recorded by the courts below overlooking these vital aspects cannot be supported in the light of the contradictions and omissions in the testimony of the prosecution witnesses.

8. I am afraid that I cannot agree with the above submissions.

9. What has been untravelled by the oral and documentary evidence adduced by the prosecution is the following:-

During the night of 3.1.2003, PW3, who was the Sub Inspector of Police, Kondotty, was on night patrol duty along with other police constables. At about 3.30 a.m. on 4.1.2003, PW3 stumbled upon the accused at 17th mile at Kondotty. The accused was found walking towards Kozhikode side with MO2 gunny bag on his shoulder. Getting suspicious, PW3 and his police party restrained the accused and questioned him. He was unable to give satisfactory explanation for his presence there and also the

contents of the MO2 gunny bag. On opening the gunny bag, the police party found MO1 series of radiators inside the bag. The accused was not able to account for his possession of the gunny bag and its contents. Thereupon PW3 arrested him under the belief that they were stolen properties in view of section 41(1)(d) Cr.P.C. and the aforesaid properties were seized under Ext.P4 mahazar. After reaching the police station, he registered Ext.P2 F.I.R. Consequent on the confession made by the accused, PW6, who was in charge of the investigation, went to Naseeb Radiator Works belonging to PW2 in the morning of 4.1.2003 and found that the roof of the shop was partly removed. PW2, who was in the shop, had realised that two of the radiators in his shop had been stolen. PW2 identified MO1 series as the properties stolen from his shop. PW6 prepared Ext.P3 scene mahazar and filed Ext.P4 report for altering the second offence. This, in short, is the prosecution case.

10. Contradictions and omissions are bound to be there even in the case of truthful witnesses. No true witness can be expected to possess such a photographic memory as to narrate with meticulous details, an incident witnessed by him. The trial

Magistrate, who had the unique advantage of seeing the witnesses and assessing their credibility, was inclined to accept the testimony of the prosecution witnesses, particularly PWs 2, 3 and 6. The trial court had rightly invoked the presumption under section 114 of the Evidence Act based on the chance recovery of MO1 series by PW3 and the confession made by the accused leading to the shop of PW2. I see no grounds to interfere with the conviction entered against the revision petitioner.

11. The sentence imposed on the revision petitioner also cannot be said to be excessive having regard to the daring manner in which the radiators in question were removed from the workshop.

In the result, this revision is dismissed confirming the conviction entered and the sentence passed.

(V. RAMKUMAR, JUDGE)

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